IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

WP(C).No. 35810 of 2007(K)

PETITIONER:

HAMEED MUKHAM VEETTIL,
KIZHAKKEVETTUNCHERRY HOUSE, MAMBURAM P.O.,
THIRURANGADI - 676 306. REP. BY HIS POWER OF
ATTORNEY HOLDER K.I.NOOR MOHAMMED MATHER,
MATHER BUILDING, MARKET ROAD, KOCHI - 682 035.

BY ADV. SRI.P.R.RAMACHANDRA MENON

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY THE SECRETARY TO THE LOCAL SELF
GOVT. (M) DEPARTMENT, GOVT.SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE CHIEF TOWN PLANNER,
GOVT. OF KERALA, THIRUVANANTHAPURAM.

3. THE REGIONAL TOWN PLANNER,
REGIONAL TOWN PLANNING OFFICE,
ERNAKULAM.

4. CORPORATION OF KOCHI,
REP. BY ITS SECRETARY,
KOCHI - 11.

R1 TO R3 BY SRI.K.J.MOHAMMED ANZAR, SR. GOVT. PLEADER.
R4 BY SRI.S.RAMESH BABU, SC, COCHIN CORPN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 35810 OF 2007

Dated this the 11th day of December, 2007

JUDGMENT

This Writ Petition has been filed by the petitioner seeking quashment of Exts.P7 and P8 orders issued respectively by the 3rd respondent, Regional Town Planner and the 4th respondent Secretary of Corporation rejecting the petitioner's application for construction of a residential building on the reason that the plot where the petitioner proposes to construct the building falls within the Perandoor Road widening Scheme under the notified Town Planing Scheme. My attention was drawn by Sri.P.R.Ramachandra Menon, counsel for the petitioner to my own judgment in WP(C) No.23557 of 2007 as well as to the Senior Town Planner's letter to the Corporation Secretary. Obviously, no notification under Section 4(1) of the Land Acquisition Act has so far been promulgated for acquisition of any portion of the petitioner's property for any purpose whatsoever. The issue, in my opinion, is covered by the judgment of a Division Bench of this Court in **Padmini v. State of Kerala** [1999 (3) KLT 465] and the judgment of the Supreme Court in **Raju Jethmalani & others v. State of Maharashtra & others** [(2005) 11 SCC 222]. The DTP Scheme containing the proposal for widening the Perandoor Road is in the air for decades now

and the case of the petitioner is that due to long passage of time the scheme has become oppressive from the point of view of the petitioner. I find force in the submission of Mr.Ramachandra Menon that the relief which has been given to the petitioners in WP(C) No. 9089 of 2007 ought to be given to the present petitioner also.

2. Under these circumstances, allowing the Writ Petition,I quash Exts.P7 and P8 and direct the Secretary of the Corporation to pass orders on the petitioner's application for building permit without being influenced by the proposal in the DTP Scheme to widen the Perandoor road. The plan will be approved and permit will be issued if they are otherwise in order and the proposal for widening of Perandoor road shall not be a reason for rejecting the same. The above directions however will be conditional on the petitioner's filing an undertaking in the form of an affidavit before the Secretary of the Corporation stating that in the event of any notification under Section 4(1) of the Land Acquisition Act being promulgated for acquisition of any portion of the petitioner's property within one year from today, he will not be claiming any compensation whatsoever as value of the building to be put up on the strength of the permit to be issued. Fresh orders will be issued on the permit application within one month of the petitioner filing affidavit as

directed above. It is needless to mention that even after the expiry of one year, in the event of any genuine public purpose, it will be open to the Corporation to acquire the property in question. Under such a contingency the petitioner will be entitled for adequate compensation not only for the land but also for the building to be constructed by him.

It is further directed that the Corporation shall permit the petitioner to file a revised plan and that revised plan should be treated as continuation of the original plan submitted by the petitioner.

PIUS C. KURIAKOSE, JUDGE

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